THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+ Writ Petition No.7518 of 2007

% Dated 20.06.2007

Vinayaka Mini Modern Rice Mill.

....Petitioner

$ The Divisional Engineer (Operation) and others.

....Respondents

! Counsel for the petitioner : Sri A.K.Kishore Reddy

^ Counsel for respondents : Sri O.Manohar Reddy

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? Cases referred:

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WRIT PETITION No.7518 of 2007

O R D E R:

The petitioner is a Modern Rice Mill at Unduru Village of East Godavari District. It was extended power supply through service meter No.654, after an agreement, as required under the General Terms and Conditions of Supply (for short 'the GTCS'), was executed. The petitioner approached this Court by filing W.P.No.22130 of 2006, alleging that the respondents have

removed the service meter and shifted the transformer, without issuing any notice. The Writ Petition was opposed by the respondents, by alleging that on account of the default committed by the petitioner, the power supply was disconnected on 27.03.2005 and thereafter, the agreement was terminated vide orders, dated 26.08.2006, after complying with the formalities. Taking note of this submission, this Court dismissed the Writ Petition on 12.12.2006. W.A.No.84 of 2007 filed by the petitioner, against the order passed in the Writ Petition, was dismissed, leaving it open to it, to assail the order of termination of agreement.

In this writ petition, the proceedings issued on 26.08.2006, terminating the agreement, are challenged. Learned counsel for the petitioner contends that it was not issued any notice as required under Condition No. 5.9.4.3 of the GTCS and that the impugned order suffers from several infirmities.

At the stage of admission, the learned Standing Counsel for the respondents had obtained the record and made extensive submissions. He contends that the power supply was disconnected, on account of non-payment of consumption charges for the months of February and March 2005 and that the order dated 26.08.2006 was preceded by a notice, dated 29.08.2005, served upon the petitioner on 21.11.2005. He further submits that the order of termination does not suffer from any illegality or infirmity and that the only course open to the petitioner, is to secure fresh power supply connection.

The fact that the petitioner was extended power supply under Category-III, duly executing agreement, in accordance with the GTCS, is not in dispute. There is some controversy as

to the exact date, on which the disconnection took place. While the petitioner contends that it was on 15.06.2006, the respondents plead that the power supply was disconnected on 27.03.2005. That, however, does not become relevant, in the context of examining whether the termination of the agreement between the petitioner and the respondents is legal and proper.

Condition No.5.9.4.3 of the GTCS prescribes the procedure for cancellation of agreements. According to it, the agreement in favour of a consumer can be terminated, if he does not seek restoration of power supply, for a period of three months from the date of disconnection, and fails to pay the arrears within thirty days from the date of issuance of a notice therefor. In the instant case, this Court is inclined to accept the plea of the respondents that the disconnection took place on 27.03.2005. The petitioner was under obligation to get the power supply restored within three months i.e. by 27.06.2005. Thereafter, it was open to the respondents to issue a notice under the relevant provision, requiring the petitioner to pay the accrued arrears, within thirty days. Failure to comply with, would lead to cancellation of agreement.

A perusal of the impugned order, dated 28.07.2006, discloses that proposals were submitted before the Divisional Engineer, first respondent herein, by the Assistant Accounts Officer, Samarlakot on 15.07.2006, for termination of the agreement. The notice of 30 days, as required under the said provision, is said to have been issued on 29.08.2005 by the Assistant Accounts Officer. The agreement was ultimately terminated, through the impugned order, dated 26.08.2006, with

effect from 30.09.2005.

Learned Standing Counsel has made available a copy of the proposal submitted by the Assistant Accounts Officer. The proposal is submitted in a prescribed form. The relevant entries are at Serial Nos.8, 9 and 10. They read as under:

8) Date of disconnection – 27.03.2005

9) Date of issue of one month notice by EPDCL/consumer – 29.08.2005

10) Date from which the agreement to be terminated – 28.09.2005

The first respondent proceeded as though the requirement under the GTCS i.e., issuance of one month notice, is complied with. The petitioner categorically denied that it was issued any notice before the agreement was terminated. In the record, a copy of the notice, referred to in the proposals as well as the in the impugned order, is filed. It does not contain any date but is said to have been signed on 03.11.2005. It is also said to have been served on the son of the proprietor of the petitioner-firm on 21.11.2005. A perusal of the same discloses that it does not contain any date, but in the reference, a notice issued on 29.08.2005 is mentioned. A separate notice, dated 29.08.2005 requiring the petitioner to pay the arrears that have accrued up to that date, including the minimum charges, is there.

Even assuming that a notice dated 29.08.2005, mentioned in the proposals exists, the fact remains that it was signed on 03.11.2005. It is said to have been served upon the petitioner on 21.11.2005. However, the agreement was terminated with effect from 30.08.2005, on the assumption that the notice was served on 29.08.2005. Therefore, the whole basis for the order of termination becomes shaky.

Another aspect of the matter is that the power to terminate the agreement is conferred upon the first respondent and it is for him to issue notice of termination. He did not choose to do so. The provision does not give any indication that the notice can be issued by any authority, other than the one, who is conferred with the power to terminate the agreement. The basic requirement under law is that unless otherwise expressly provided, the authority, which passes an order detrimental to the interests of the citizen, alone must issue the show cause notice. No provision contrary to this is brought to the notice of this Court. Therefore, the order of termination, which is challenged in this Writ Petition, cannot be sustained in law.

Learned Standing Counsel for the respondents submits that even if the order of termination is to be treated as illegal or invalid, the agreement stood cancelled, after expiry of four months from the date of disconnection, by operation of proviso to Condition 5.9.4.3 of GTCS. In a way, the proviso brings about a deemed termination. Whenever, the deemed state of affairs is provided under a Statute, it is for the parties to take advantage of the same and proceed accordingly. Where, however, they take recourse to any other measure, which is at variance with the deemed provision, they cannot fall back on it. Respondents themselves proceeded on the assumption that the agreement in favour of the petitioner remained intact, even after expiry of four months from the date of disconnection, and they have chosen to terminate the agreement, through a specific order. When, ultimately, the order is found to be not in accordance with law, it would not be open to them, to plead that the proviso operated

and the agreement in favour of the petitioner stood terminated. They cannot approbate and reprobate. Therefore, this contention cannot be accepted.

During the pendency of the Writ Petition, the power supply to the petitioner was restored, by requiring it to pay certain amounts. The result of the order of termination being held to be invalid, would be that the petitioner is under obligation to pay the minimum charges from the date of disconnection till the date of termination i.e., 26.08.2006. It cannot be held liable to pay the minimum charges thereafter. The amounts paid by the petitioner must be adjusted towards dues of minimum charges for the period referred to above, or future consumption charges or towards the deficit of security deposit to be made.

The Writ Petition is, accordingly, allowed, to the extent indicated above. There shall be no order as to costs.

20.06.2007

Note: L.R. copy to be marked.

(B/o)

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